

BEFORE THE FEDERAL ELECTION COMMISSION 2011 MAR 24 AM 10: 25

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In the Matter of)
)
MUR 6365) DISMISSAL AND CASE CLOSURE UNDER THE
SAGER FOR CONGRESS AND) ENFORCEMENT PRIORITY SYSTEM
ROBERT C. WARDLOW III,)
AS TREASURER)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Act, and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6365 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6365.

In this matter, complainant Shirley Anderson alleges that Sager for Congress and Robert C. Wardlow III, in his official capacity as treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to display printed boxes around disclaimers on yard signs and other large signs, in violation of 2 U.S.C. § 441d(c)(2) and 11 C.F.R.

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FEDERAL ELECTION
COMMISSION
SECRETARIA

1 § 110.11(c)(2)(ii).¹ The complainant submitted three pictures of signs that included the words
2 “Sager [for] Congress,” the Committee’s website address, <http://www.standwithsager.com/>, and the
3 phrase “paid for and approved by Sager for Congress,” but did not include printed boxes around the
4 disclaimers. In addition, the complainant alleges that the Committee failed to timely file its 2010
5 Pre-Primary election report by the August 12, 2010 deadline, or twelve days before Florida’s
6 August 24, 2010 primary election, in violation of 2 U.S.C. § 434(a),
7 see http://www.fec.gov/pages/report_notices/2010/state_notices/flprim.shtml.

8 In response, the Committee acknowledges that it inadvertently omitted the printed boxes
9 from the disclaimers on the signs in question, which it states were the first campaign items designed
10 by its “grassroots campaign,” and claims that subsequent campaign literature included disclaimers
11 with printed boxes. Further, the Committee offers that while the disclaimers lacked the requisite
12 boxes, each was printed with a high level of color contrast, was larger than required, and was easily
13 noticed. As to the allegation that the Committee failed to timely file its 2010 Pre-Primary election
14 report, the Committee seems to imply that the report was timely filed when it cites to an August 13,
15 2010 “Notice of Failure to File” (“Notice”) sent by the Commission’s Reports Analysis Division,
16 (“RAD”) that instructed the Committee to file the report within four days of the date of the Notice.
17 The Committee filed the report with the Commission on August 16, 2010, within four days of the
18 date of the Notice and filing deadline.

19 Any public communication for which a candidate or an authorized committee makes a
20 disbursement must contain a disclaimer that clearly states the authorized committee paid for the
21 communication. 11 C.F.R. §§ 110.11(a)(1) and (b)(1). The disclaimer: (1) must be presented in a
22 clear and conspicuous manner and, for printed communications, must be of a sufficient type size to

¹ Mr. Jason Sager was an unsuccessful candidate for Congress from Florida’s 5th Congressional District.

1 be clearly readable; (2) must be contained in a printed box set apart from the other contents of the
2 communication; and (3) must be printed with a reasonable degree of color contrast between the
3 background and the printed statement. 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c).

4 As acknowledged by the Committee, the signs in question did not include a printed box
5 around the disclaimers. *See* 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii). However, the
6 pictures attached to the complaint appear to indicate that, as the Committee claims in its response,
7 the disclaimers identify the Committee and indicate that it authorized and paid for the
8 communications. *See* 2 U.S.C. § 441d(a)(1) and 11 C.F.R. §§ 110.11(b)(1) and (c)(1). In addition,
9 although the Committee filed its 2010 Pre-Primary election report after the August 12, 2010
10 deadline, in violation of 2 U.S.C. § 434(a)(2)(A)(i), it did comply with RAD's Notice and filed the
11 report four days later on August 16, 2010.

12 Given the Committee's quick response to RAD's non-filer notice, coupled with the technical
13 nature of the disclaimer violations, along with the Committee's acknowledgement and claims of
14 remedial measures taken after the signs in question were printed, this Office believes further action
15 in this matter is unwarranted. Accordingly, under EPS, the Office of General Counsel has scored
16 MUR 6365 as a low-rated matter and therefore, in furtherance of the Commission's priorities as
17 discussed above, the Office of General Counsel believes that the Commission should exercise its
18 prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).
19 Additionally, this Office recommends that the Commission remind Sager for Congress and
20 Robert C. Wardlow III, in his official capacity as treasurer, of the requirements under 2 U.S.C.
21 § 434(a)(2)(A)(i), concerning the timely filing of pre-election financial disclosure reports and
22 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii), concerning the requirement to place boxes
23 around certain printed disclaimers.

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RECOMMENDATIONS

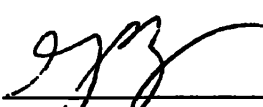
The Office of General Counsel recommends that the Commission dismiss MUR 6365, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind Sager for Congress and Robert C. Wardlow III, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 434(a)(2)(A)(i), concerning the timely filing of pre-election financial disclosure reports and 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii), concerning the requirement to place boxes around certain printed disclaimers.

Christopher Hughey
Acting General Counsel

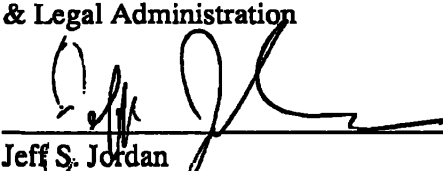
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